THE HON'BLE SRI JUSTICE P.S.NARAYANA

W.P.No.10087 of 2007

Date: 9th October, 2007

Between :-

J. Narasimhulu .. Petitioner

And

The Regional Joint Commissioner,
Multi Zone-I, Endowments Department,
Kakinada and 3 others ..
Respondents

THE HON'BLE SRI JUSTICE P.S.NARAYANA

Writ Petition No.10087 of 2007

ORDER:-

This Court ordered *notice before admission* on 9-5-2007 and ordered *status quo* for a limited period and subsequent thereto issued *rule nisi* and extended the order of *status quo* granted earlier until further orders. W.V.M.P.No.1707/2007 is filed by respondents 3 and 4 to vacate the interim order.

2. With the consent of the Counsel on record, the Writ Petition itself is heard finally.

3. The Writ Petition is filed for a Writ of Mandamus declaring the action of the 1st respondent vide its

impugned order made in appeal No.146/2007 dt.20-3-2007 which arises out of an order of 2nd respondent vide its order Rc.No.B3/1536/2005 dt.29-8-2006 in rejecting the claim of the petitioner as a landless poor person is contrary to spirit of Section 82(2) of the A.P.Charitable and Hindu Religious Institutions and Endowments Act 1987, as illegal, arbitrary and violative of Article 14 of the Constitution of India, consequently *set aside* the same by directing the respondents to confirm the right of the petitioner as owner of the wet land in Sy.No.34/1 to an extent of Ac.1-40 cents vide patta No.183 situated at Chintada village of Jami Mandal, Vizianagaram District in the interest of justice and to pass such other suitable orders.

4. It is stated that the Writ Petitioner is a landless poor person and has been cultivating the land since more than 25 years and in fact the lands belonged to Sri Mallikharjuna Swami Temple in Sy.No.34/1 to an extent of Ac.1-40 cents of Chintada village, Jami Mandal in Vizianagaram District. It is also stated that the petitioner had spent considerable amount for leveling the land into cultivation and all his family members are depending on the said land and they have no other land except the small extent of land. It is further stated that the petitioner

has been paying lease amounts regularly and the respondents 3 and 4 had taken land tax for the year 2006-2007 and it shows that his family members are in occupation and possession and enjoyment of small extent of land.

Sl. No.	Name of the occupant	Serious controversy.No.	Extent Ac.Cents	Receipt No. & Date	Classification and Patta
	J.Narasimhulu	34/1	1-40		Wet Patta 183

It is also stated that the 2nd respondent passed a common order while rejecting the claim. Hence, the petitioner and other petitioners are taking the common pleadings. It is also stated that the petitioner in this Writ Petition and the petitioners in other Writ Petitions had applied in the year 1993 for pattadar pass books and title deeds to the Mandal Revenue Officer, Jami Mandal and accordingly after due verification and physical possession over the respective lands by the petitioner and other petitioners, the Mandal Revenue Officer had issued Pattedar pass book and title book in the year 1994 and 1995 to all of them. It is further stated that all the petitioners had made number of oral requests to the respondents No.2 and 3 to consider their cases under Section 82(2) of Act 30/87 since they have been cultivating the lands over 25 years as well as landless poor persons but the respondents

postponing the matter on one pretext or the other. It is further stated that suddenly the 2nd respondent had served a notice on 25-4-2005 under Section 82(1) of the A.P.Charitable and Hindu Religious Institutions and Endowments Act 1987 (Act 30/87) for cancellation of existing lease and asked them to vacate within 30 days. It is also stated that immediately the petitioner and others had filed Writ Petition W.P.No.12272/2005 on the file of this Court questioning the highhanded action of the 2nd respondent since the petitioner and others are small farmers. It is also further stated that this Court while disposing of the Writ Petition W.P.No.12272/2005 on 27-6-2005 with an observation directed the petitioners in that Writ Petition to submit a representation to the respondents 1, 2 and 3 stating that the holding of all the petitioners either on ownership of cultivating tenant would support their claim to being landless poor persons within the meaning of the explanation to Section 82(2) of the Act 30/87 and further held on such representation being made, the same would be considered by the respondents before proceeding further to take action as stated in the impugned notice. It is also further stated that after receiving the order in W.P.No.12272/2005 the petitioner and others have filed a representation on 29-6-2005 by

way of Registered Post Ack. Due to the respondents 1, 2 and 3. It is also stated that the respondents 1, 2 and 3 have acknowledged the said representations on 30-6-2005 and 6-7-2005. It is further stated that on 1-9-2005 the 2nd respondent has served a notice vide his letter No.NIL/2005 to the petitioner and others to file documentary evidence within three days and accordingly the petitioner and others had filed documentary evidence – lease of agricultural land, tax receipts and Pattedar pass books and title deeds within the three days. It is also further stated that the 2nd respondent had not satisfied with the above documentary evidence and again directed them orally to file a small farmer certificate from the Mandal Revenue Officer and as such the petitioner and others filed applications to the Mandal Revenue Officer, Jami Mandal on 25-9-2005. It is also stated in para 7 of the affidavit filed in support of the Writ Petition that the petitioner along with others met 2nd respondent and requested to consider their issue on the basis of the documents already filed by the petitioner and others since the M.R.O. is postponing the issuance of certificates due to his busy schedule and that due to Zilla Parishad and Panchayat elections, he could not issue certificates of small farmer to the petitioner and others. It is further

stated that while so, on 5-7-2006 the 1st respondent issued final notice to the petitioner and others vide notice No.B3/1860/2005 General Admn., wherein directing the petitioner and others to attend on 13-7-2006 along with certificate if any and if they failed to do so, then action would be taken as per law. It is further stated that on 13-7-2006 the petitioner along with others have filed once again the relevant documents like agricultural land, tax receipts, Pattedar pass books, title books and requested her that so far the M.R.O., had not issued small farmer certificate, but the 1st respondent not satisfying with their documentary evidence, passed an order on 29-8-2006 rejecting all claim applications of the petitioner and others on the ground that they are not obtained the small farmer certificate from the Mandal Revenue Officer, which was received by the petitioner on 15-9-2006. It is also further stated by the petitioner that on knowing rejection of his claim application, he met the Mandal Revenue Officer of Jami Mandal and explained about the rejection of claims by the 1st respondent and thereafter the Mandal Revenue Officer of Jami Mandal had issued small farmer certificates to the petitioner and others vide his proceedings L.Dis.No.457/06A, dt.29-9-2006 and after receipt of the small farmer certificates, they approached

the respondents 1 and 2 and filed a common representation on 2-10-2006 to the 1st respondent requesting him that since they received certificate on 30-9-2006 from the M.R.O. regarding landless poor person and small farmer certificate and hence re-examine into the matter and consider the same, but the respondents 1 and 2 have refused to take the same on the ground that they already had passed orders and communicated to all. It is also further stated by the petitioner that now the respondents 2 and 3 have visited his land on 5-5-2007 and directed him to vacate the land on the ground that his appeal was dismissed by the 1st respondent. It is also stated by the petitioner that in fact, there is a standing crop in his land and he requested respondents 2 and 3 to stop their highhanded action since he invested huge money for raising vegetable crop, but the respondents 2 and 3 did not heed his request and granted 4 days time for vacating the land. The petitioner also stated that because of lack of money he could not file the Writ Petition before 1-5-2007 and that therefore the respondents may at any time evict him within 4 days and in the event of they evicting him, he may lose his right over the land and also he will be put to great hardship since there is a standing crop in his field. Hence, there is a great urgency for filing the present

Writ Petition for stopping the highhanded action of the respondents. In such circumstances, the petitioner filed the present Writ Petition raising several grounds.

5. In the affidavit filed in support of the vacate application, which was sworn to by the Manager of Sri Mallikarjuna Swami Temple, it was stated in para 3 that it is false on the part of the petitioner to allege that he had been cultivating the land for more than 25 years. It is also stated that for claiming benefit of Section 82 of Act 30 of 1987, one should have an approved lease duly executed and obtained in public auction and should also be a landless person. It is also stated that the last approved lease the petitioner had was for 3 years from 1-4-2002 to 31-3-2005 and thereafter he is only a sitting tenant and an encroacher paying damages for the illegal occupancy and after issuing Notice in Form-I, the petitioner filed a representation before the Assistant Commissioner of Endowments for recognition as landless poor person, which was rejected on 29-8-2006. It is also further stated that the petitioner's appeal was rejected by the Regional Joint Commissioner on 20-3-2007 in Appeal No.146/2007 as the petitioner had no approval lease after 2005-2006 and that the petitioner had failed to prove that he had approved lease for 6 years prior to coming into force of the Act 30 of 1987 and mere payment of maktha for sitting on

the land will not make the petitioner a cultivating tenant.

6. On a careful reading of the order impugned, this Court is satisfied that even if the facts narrated by the writ petitioner to be taken into consideration, it cannot be said that the petitioner enjoys the status of a tenant and further it is pertinent to note that though ample opportunity had been given, no acceptable evidence to establish the relevant facts had been placed before the authorities concerned and even otherwise on a careful analysis of the order impugned, this Court is satisfied that the Regional Joint Commissioner, Multizone-I, Endowments Department, Kakinada – respondent No.1, had taken into consideration all the facts and recorded a positive finding that the appellant to be termed as an encroacher within the meaning of Section 83 of the Andhra Pradesh Charitable and Hindu Religious Institutions & Endowments Act, 1987. Hence, viewed from any angle, this Court is of the considered opinion that the impugned order does not suffer from any illegality, whatsoever, and accordingly, the Writ Petition is hereby dismissed. No order as to costs.

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Justice P.S.Narayana

9th October, 2007

smr